IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7665 of 2007

M/S BHANAVI AGRO PVT.LTD.
V/S
STATE & ORS.

Mr. SAJJAN SINGH, for the appellant / petitioner

Date of Order : 23.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

Heard learned counsel for the petitioner.

This petition has been filed before Division Bench in view of the fact that the petitioner has prayed for declaring the provisions of Section 82(3) of the Rajasthan VAT Act, 2003 to be ultra-vires as it stipulates a condition of deposit of 10% of the tax or demand, and other amounts as a condition for maintainability of the appeal. Various grounds have been raised to challenge the vires of the provisions, but the substance of the contention is that this provision is confiscatory in nature, as it virtually takes away the right of appeal.

In our view, this question has already been a subject matter of adjudication before this Court in a bunch of writ petitions led by D.B.C.W.P.No.458/2007, wherein the validity of the proviso to Section 65(1) of the Rajasthan Stamp Act was challenged, where-under the condition for

maintainability of the appeal was, to deposit 50% of the amount, and in that case also, the validity was challenged mainly on this ground apart from various other grounds also and vide judgment dated 1.11.2007, the validity of that proviso to Section 65(1) has been upheld by this Court. In that view of the matter, for the same reasonings, we do not find any provisions of Section 82(3) of the Rajasthan VAT Act, 2003 to be ultra-vires.

In that view of the matter, this writ petition is disposed of with a direction to the Registry to register it as S.B. Civil Writ Petition again separately, and be placed before the concerned Single Bench. The concerned Single Bench will obviously consider, as to whether in the facts and circumstances of the present case, he would like to entertain the writ petition, or not, in view of the availability of alterantive remedy of appeal.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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